Court, U.S.
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No.

IN THE
SUPREME COURT OF THE UNITED STATES

FALL TERM, 1994

FRANK S. DEUS, Petitioner,
v.
ALLSTATE INSURANCE CO., Respondent,
VOORHIES & LABBÉ, Intervenor.
FRANK S. DEUS, Petitioner,
v.
ALLSTATE INSURANCE COMPANY, Respondent,
v.
NATIONAL NEIGHBORHOOD OFFICE AGENTS' CLUB, INC. and RANDY J. LANE.
FRANK S. DEUS, Petitioner,
v.
ALLSTATE INSURANCE CO., Respondent.
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PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE FIFTH CIRCUIT

OF THE UNITED STATES

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. In a claim for intentional infliction of emotional distress, is the court (rather than the jury) to make a "threshold determination" of whether: (a) the acts of the employer are extreme and outrageous in character, going beyond the bounds of decency, (b) whether such acts caused severe emotional distress; or (c) whether the employer intended, by performing the acts, to inflict severe emotional distress, or that the emotional distress would be substantially certain to result from the conduct? (In conflict with the Deus decision, the federal third and other circuits and the RESTATEMENT (SECOND) OF TORTS suggest the jury is the proper forum.)

2. In reversing a jury determination favorable to the plaintiff, may a federal court grant a judgment as a matter of law by rejecting the testimony of a witness testifying to such specific acts as not probative of the issue on the grounds of credibility as weighed against other evidence in the record, or is this credibility evaluation solely in the province of the jury?

3. Is a contract provision setting up a "due process" procedure for determining termination for unsatisfactory performance invalid because the employer under the contract may otherwise terminate the employee at will?

LIST OF PARTIES

The sole parties to the proceedings below were:

Petitioner, FRANK S. DEUS, as plaintiff and appellant;

ALLSTATE INSURANCE COMPANY, as defendant and appellee;

VOORHIES & LABBÉ, intervenor, appellant, and cross-appellee, claiming attorneys' fees and costs; and

NATIONAL NEIGHBORHOOD OFFICE AGENTS CLUB, INC., movants and appellants on intervention motion.

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PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE FIFTH CIRCUIT OF THE UNITED STATES

Frank S. Deus respectfully petitions that a Writ of Certiorari issue to review the opinions and judgments of the Court of Appeals for the Fifth Circuit of the United States in this case entered on March 8, 1994, and April 5, 1994.

OPINIONS BELOW

The opinion of the district court is reported at 800 F. Supp. 420 (W.D. La. 1992).

The opinion on rehearing of the Court of Appeals for the Fifth Circuit is reported at 15 F. 3d 506 (5th Cir. 1994).

JURISDICTION

This is a breach of contract and a tort suit based upon intentional infliction of emotional distress, filed by Frank S. Deus against his employer, for which he had acted as an insurance agent for twenty (20) years. This suit was filed in federal court against Allstate under diversity of citizenship, 28 U.S.C.S. § 1332.

Judgment of the Court of Appeals for the Fifth Circuit of the United States was entered on March 8, 1994. Timely Petition for Rehearing was denied on April 5, 1994.

This court's jurisdiction is invoked under 28 U.S.C.S. § 1254.

STATEMENT OF THE CASE AND REASONS FOR GRANTING THE WRIT

The Deus matter involves a substitution of the court's factual conclusions for a jury verdict in favor of Deus on a Rule 50(a) motion after the jury verdict. This case was filed under diversity of citizenship by Frank S. Deus against his employer, Allstate Insurance Company, for intentional infliction of emotional distress and breach of contract.

Doctors testified that Mr. Deus sustained permanent disability, the stress triggering a manic depressive condition.

Allstate Insurance Company filed a Motion for Summary Judgment, which was extensively briefed by both sides. The trial court, after review of the briefs and the submitted evidence, denied the Motion for Summary Judgment on the grounds that there was sufficient question of fact to proceed to trial.

The defendant filed Rule 50(a) motions during the trial. The court granted the motion on the contract claim, but took the motion on the claims for intentional infliction of emotional distress and prescription under advisement. The claim was submitted to the jury, which returned a verdict of $1,450,000 for plaintiff, Frank Deus, determining that the employer was guilty of extreme and outrageous conduct with the intent to cause emotional distress when its managers knew of Mr. Deus's condition.

After the verdict, the plaintiff was asked to file a brief on the "statute of limitations" defense filed immediately before the case went to the jury. Following the jury verdict, the district court ruled in favor of plaintiff on the Rule 50(a) motion, but subsequent to its favorable ruling for plaintiff denying the statute of limitations defense, reconsidered "*sua sponte*" its earlier ruling denying Allstate's Rule 50(a) motion as to the merits of Deus's claim for intentional infliction of emotional distress. No brief on this question was requested from the plaintiff.

On July 28, 1992, Deus filed for appeal to the Fifth Circuit Court of Appeals. Thereafter, various other entities filed motions to intervene, and after all such motions and filings, the appeal was filed, then consolidated on motion of Deus.

FACTS

Deus contends factually that Allstate performed the following acts (among others) to intentionally harass him:

(1) Created a stressful climate for all of its agents;

(2) Created a climate which made it impossible for its office agents to produce their previous level of sales or the new levels required by the company;

(3) Then, under the above circumstances, required additional production from these same agents, but more specifically, Frank Deus, the only agent placed under threat of termination;

(4) Specifically targeted and singled-out Frank Deus for special harassment or threat of termination, as an example to the other agents in his district;

(5) Manipulated and falsified the number and specific agents for inclusion in his several peer groups, all to falsify the adequacy of Frank Deus's production and to assure disciplinary action against Frank Deus;

(6) Falsified documentary information and falsely included different lines of production on different reviews, to further make it appear that Frank Deus's production was inadequate, all in violation of its own rules;

(7) After completion of his last review, withheld favorable determination or intentionally failed to timely advise Frank Deus that he had made his production quotas when they

knew he had fulfilled such quotas, all with the specific intent of causing emotional distress to Frank Deus;

(8) Carried out the stress-related efforts outlined in item (7) above, to force cancellation of his prepaid vacation, when they knew of his health need for such vacation and recreation;

(9) Removed him from disciplinary action (for unsatisfactory work performance) and then again placed him on a disciplinary or job-in-jeopardy program, contrary to its own rules;

(10) Carried out the above when they knew of Deus's highly-charged emotional state, caused by the previous threats of termination; and

(11) Actual "conspiratorial" discussions in management meetings of most or all of the above specific acts, with the specific knowledge that it was causing severe emotional distress to Frank Deus.

The witness's testimony upon which Deus based his entire case has never been discussed in the written opinions of either the trial court or the Court of Appeals. The trial court did not mention the name or testimony of the primary witness presented in support of Mr. Deus's claim. This witness was James Ivy, a former manager for Allstate, who was present in staff management meetings when most of the above items were discussed. The Court of Appeals mentioned this witness, in passing, on page 515 of its decision, but discussed none of his testimony, which was the

gravamen of the Deus claim. Deus v. Allstate Ins. Co., 15 F. 3d 506 (5th Cir. 1994), at 515.

The trial court, as did the appellate court, discussed only the corroborative evidence, which Deus introduced solely to support the main testimony of James Ivy, as well as the other corroborating witnesses, Ebbs, a former manager who was instructed to target an agent in this district, and Manzeller, an Allstate agent who was himself targeted for union activity. As discussed by the court, the corroborating evidence became a "straw man," when plaintiff's intent was merely to establish motives on the part of Allstate and to impeach its witnesses, and this was not plaintiff's only evidence to establish the intentional tort and breach of contract.

As a manager working for Allstate, James Ivy attended the meetings of other managers in the office in which Frank Deus was located. These were the management meetings for discussion of the operation of the specific office in which Frank Deus was located. The peer group procedure was the "due process" procedure set up by Allstate to prevent arbitrary dismissal for "unsatisfactory work performance" by all agents. The court found this due process procedure to be invalid because the contract was otherwise an employment at will agreement.

James Ivy testified that he was present at the management meeting in which the operation of Frank Deus's office and the handling of Frank Deus were considered. The managers in these meetings specifically discussed "targeting" Frank Deus (Ivy's choice of words). The managers actually discussed how they would manipulate Frank Deus's peer group, and discussed falsifying the documents involving the peer group review, as well as the other ratings information needed to terminate an employee under the "due process provisions" of their contract. James Iy

testified that this was done for the specific purpose and intention of harassing and pressuring Frank Deus by making certain that he fell out "on the bottom of the peer group" so he could be disciplined and threatened with termination. (See Appendix A, Excerpts of Deposition of James Ivy, pages 7-12; 22; 33; 65; 71-79; 90-92; 98; 130; 137; and 146.)

This falsification of information and manipulation of the peer group to harass Frank Deus was openly discussed in meetings attended by Blankenhorn, Artiques, Rhodes, and/or Raley, all managers over Frank Deus. (See Appendix A, Excerpts of Deposition of James Ivy, pages 14-18; 95-98). Ivy specifically testified that they knew and discussed that Frank Deus was having medical problems and intended to put great stress on him to force either his termination, resignation, or capitulation to a new contract, as opposed to the contract under which he was working. They specifically discussed the fact that he had tinnitus, and laughed it off (yes, there was actually testimony that they laughed about it), with comments that he was probably going to have a "lot more ringing of the ears" because of the stress before they were finished with him. (See Appendix A, Excerpts of Deposition of James Ivy, pages 14-18; and 95-98).

We specifically have testimony from Ivy that they knew of his depression problem and his tinnitus, as indicated in the preceding notation of testimony, but, additionally, Mr. Deus testified that he had informed the company of the fact that the tinnitus was getting worse because of the stress in the office, and that he was considering resignation because of his anxiety and depression due to the stress and the increased tinnitus because of such stress. (See Appendix A, Excerpts of Deposition of James Ivy, page 14, line 25; page 15, line 1-13; pages 16-18; pages 95-98.)

Both Ivy and Deus testified concerning the last manipulation of the peer group and rating system, and testified concerning the manager's specific use of that system to put additional stress on Frank Deus on the last day of Mr. Deus's work, when that manager specifically took additional steps to cause emotional stress on Frank Deus when he and all other members of the work force were aware that Frank Deus was in an extremely emotional state due to the extra stress which had been placed on him in Allstate's effort to move its entire work force to a new contract. (See Appendix A, Excerpts of Deposition of James Ivy, pages 12, line 10-25; page 13, line 1-13; page 14, lines 1-25.)

The record is replete with testimony that the purpose of all of this was to make Frank Deus an example, to move Frank Deus and all members of the work force to a new contract less favorable to the employee. Moreover, we have specific testimony of James Ivy that the specific purpose of placing the stress on Frank Deus was to move Frank Deus to the new contract, or to get him to quit, or to terminate him. (See Appendix A, Excerpts of Deposition of James Ivy, page 7, line 1-25; page 8, lines 1-2.)

The jury, of course, heard the testimony of Ivy, and because of this testimony, with other corroborative testimony, some of the latter being the only evidence discussed by the court, the jury concluded that Allstate had a specific intent to cause Frank Deus emotional stress to accomplish specific purposes which it did not feel that it could require from him because of their contractual agreements. The common sense and conscience of this American jury was certainly shocked, as it should have been. It recognized this as beyond the pale in the American workplace, even for a white male employee. The question of whether or not the contract is binding, of course, is not the important issue in the intentional tort; it is solely a question of why Allstate felt it needed to do this

in order to accomplish its purpose. Although everyone admits Allstate could have terminated Frank Deus under the "at will" contract, they chose not to do this, because they knew that it would cause nationwide repercussions with their work force. They did, at least, give "lip service" to the contractual agreement which they had signed with their employees in each state.

None of the above testimony of the eye-ear witness, who was actually in the meetings with managers of Allstate, is discussed in either the trial court decision granting the Rule 50(a) motion or the Fifth Circuit Court of Appeals decision upholding the trial court. The only evidence discussed by the Fifth Circuit Court of Appeals is the peripheral corroborative testimony, all of which was denied by Allstate, but which was established by other witnesses, setting up the atmosphere in which the specific actions against Frank Deus were carried out. The implication, from the written decision, is that none of this corroborative evidence is probative of Frank Deus's contention "that his peer group was altered for the purpose of inflicting emotional distress on him." Deus, *supra*, at 2971. The statement that there is no probative evidence of peer group alteration can only mean that the appellate court and the trial judge have decided on the credibility of James Ivy and determined that he cannot be believed. This conclusion on credibility was contrary to the jury's conclusion. We suggest this is solely within the province of the jury, and should be grounds for reversal of the decision by the trial court and the Fifth Circuit Court of Appeals.

ARGUMENT

1. **In a claim for intentional infliction of emotional distress, is the court (rather than the jury) to make a "threshold determination" of whether: (a) the acts of the employer are extreme and outrageous in character, going**

beyond the bounds of decency, (b) whether such acts caused severe emotional distress; or (c) whether the employer intended, by performing the acts, to inflict severe emotional distress, or that the emotional distress would be substantially certain to result from the conduct? (In conflict with the Deus decision, the federal third and other circuits and the RESTATEMENT (SECOND) OF TORTS suggest the jury is the proper forum.)

Discussing this question of law, Your Honors will note that the Fifth Circuit Court of Appeals decision in Deus, though referring to damages, actually makes a threshold determination that the acts complained of by Mr. Deus are insufficiently "extreme and outrageous in character" to establish the claim of intentional tort. The discussion is difficult to follow, because it moves from a consideration of a "threshold determination" of whether or not the acts are "outrageous in character" and "so extreme in degree" as to cause severe emotional distress, or were "intended" to cause such distress, and a discussion of a separate issue of the sufficiency of evidence to establish the alleged outrageous acts of the employer. It appears clear, however, that the court made a "threshold determination" that the acts complained of were not sufficient to support a claim of intentional infliction of emotional distress. This "threshold determination" is contrary to both the Louisiana jurisprudence and the jurisprudence of other federal circuits.

First, absolutely no Louisiana case has held, or even discussed, an alleged requirement that the trial court make a threshold factual determination as to outrageousness before sending the matter to the jury. Likewise, absolutely no Louisiana case, on intentional infliction of emotional distress or any other tort claim, has ever held that the court may usurp the province of the jury in this regard. All Louisiana cases support the opposite conclusion,

i.e., that these facts simply present the jury a question, and the jury must determine what actually occurred and whether this conduct was outrageous enough to constitute the tort of intentional infliction of emotional distress. White v. Monsanto, 570 So. 2d 211 (La. App. 5 Cir. 1990), 575 So. 2d 381 (La. 1991), 585 So. 2d 1205, 60 U.S.L.W. 2236, 6 Indiv. Empl. Rts. Cas. (BNA) 1340 (La. 1991); Bustamento v. Tucker, 592 So.2d 514 (La. App. 2 Cir. 1992), 598 So. 2d 343 (La. 1992), 607 So. 2d 532, 60 Empl. Prac. Dec. P41, 819 (La. 1992); Maggio v. St. Francis Medical Center, Inc., 391 So. 2d 948 (La. App. 2 Cir. 1980), 396 So. 2d 1351 (La. 1981) (a case with very similar facts); Breaux v. South Louisiana Elec. Co-op Ass'n, 471 So. 2d 967 (La. App. 1 Cir. 1985).

Likewise, there are no cases which support a "threshold determination" by the judge or the Court of Appeals making factual findings which usurp the province of the jury. In fact, in rejecting a similar argument, the court, in Chuy v. The Philadelphia Eagles Football Club, 595 F.2d 1265 (3rd Cir. 1979) (cited at page 23 of Allstate's brief), held that:

> "Comment h to section 46, upon which [defendant] relies, divides the functions of the court and jury in a conventional manner. The court must determine, as a matter of law, whether there is sufficient evidence for reasonable persons to find extreme or outrageous conduct. If the plaintiff has satisfied this threshold evidentiary requirement, the jury must find the facts and make its own characterization."

We thus suggest that the Deus decision of the Fifth Circuit is in conflict with other circuits and with the Louisiana

jurisprudence on the subject. In essence, the court has taken away from plaintiff his right to a trial by jury.

To take the issue from the jury, the court has also taken the position that the facts in Deus are inapposite to the cases of Wilson v. Monarch Paper Co., 939 F.2d 1138, and Dean v. Ford Motor Credit Co., 885 F.2d 300. Petitioner submits that these two Fifth Circuit cases (decided under Texas law, not Louisiana law) are factually quite similar to Deus; in fact, there was less harassment in Wilson than there was in Deus. With the testimony of Ivy, Ebbs, and Manzeller (which, with the exception of a passing reference to Ivy in the Fifth Circuit decision, are nowhere mentioned in the court opinions), Wilson and Dean are in direct opposition to the court's current decision in Deus. With Ivy's testimony, it is impossible to distinguish these cases, but even without it, a distinction is problematic.

More importantly, however, the Deus case, supra, places the Fifth Circuit Court of Appeals at odds with other circuits, by deciding, beginning on page 514 of the decision and ending on page 516, that the court, not the jury, must make a threshold determination whether the claimed actions of the employer are extreme in degree and outrageous in nature and whether or not such actions were intended to inflict severe emotional distress. On page 514 of the decision, the court cites the Restatement of Torts for this "threshold" proposition. The court analyzes the corroborative evidence of Deus -- not Ivy's testimony and his eye-ear witness accounts -- and makes a determination as to whether or not its "conscience is shocked," and thereafter removes it from the jury's province of determination. In this connection, we call the court's attention to the fact that other federal circuits specifically have concluded that it is within the province of the jury to make the determination of whether or not the acts of the employer are

extreme and outrageous and were intended to cause emotional distress.

The court cites Section 46 of Restatement of Torts, 2d which Allstate cited for its proposition that the trial court must make a "threshold determination" of whether the defendant's conduct "meets a minimum degree of outrageousness required by law before that issue can be submitted to the jury for resolution."

The Restatement 2d itself does not assert that the trial court must make a separate, binding, factual finding before submitting the case to the jury. The Restatement simply applies the usual rule that a court must determine, "in the first instance," whether, as a matter of law, the plaintiff has stated a cause of action for intentional infliction of emotional distress. The Restatement fully recognizes that it is for the jury to determine factually which actions actually took place, and "whether, in the particular case, the conduct has been sufficiently extreme and outrageous to result in liability." (Comments "h" and "i" of the Restatement 2d of Torts.)

In Baskin v. Hawley, 807 F.2d 1120 (2nd Cir. 1986), a case involving the tort of intentional infliction of emotional distress, the court held that the "threshold determination" is a jury question, not a question for the court:

> "The question of the outrageousness of a defendant's conduct is, of course, one fact for the jury within the usual limits on sufficiency of the evidence . . ." 807 F.2d at 1134.

See, also, Williams v. Guzzardi, 875 F.2d 46 (3rd Cir. 1989).

Note that the court, in Deus, from pages 514 to 516, analyzes all of the peripheral testimony, not the testimony of Ivy, Ebbs, and Manzeller, to reach and justify its threshold determination that the conduct was not extreme and outrageous and was not intended to cause emotional distress, a decision directly opposite the jury's determination after hearing the testimony of Ivy, Ebbs, and Manzeller.

2. **In reversing a jury determination favorable to the plaintiff, may a federal court grant a judgment as a matter of law by rejecting the testimony of a witness as not probative of the issue on the grounds of credibility as weighed against other evidence in the record or is this solely in the province of the jury**?

Under the established law, a court cannot substitute its own opinion on credibility for that of the jury. See Boeing Company v. Shipman, 411 F.2d 365. "Where there is an evidentiary basis for the jury's verdict, the jury is free to discard or disbelieve whatever facts are inconsistent with its conclusion." Lavendar v. Kern, 327 U.S. 645; 66 S.Ct. 740, and, it is for the jury, not the trial judge, to resolve internal conflict in a witness's testimony. Wiltz v. Mobil Oil Company, 938 F.2d 47 (5th Cir. 1991).

The law requires that all reasonable inferences from this testimony be viewed in the light most favorable to the plaintiff. Deus, *supra*, at page 513; Matsushita Electric Industrial Co. v. Zenith Radio Corporation, 475 U.S. 574, 574; 106 S.Ct. 1348, 1356. Under this standard, the jury verdict must be upheld.

The testimony of James Ivy sets forth, in specific detail, the acts of harassment taken against Frank Deus, as set forth on page 3 of this brief, and makes the motive for such actions quite clear. There was an effort to pressure the agents into changing

contracts because Allstate did not feel it could order them to do so, and Frank Deus was singled - out as an example for this purpose and as a troublemaker (his outspokenness). Again, the law requires that all inferences from this testimony are to be viewed in the light most favorable to the plaintiff. Under this standard, direct testimony from the witnesses (particularly Ivy) that the Allstate managers told them they would take actions to pressure them into the NOA contract, and the testimony that they did in fact take such actions, and specifically the action against Deus, as discussed in the management meetings, requires this court to reach a different conclusion with regard to the validity of the jury verdict. A full discussion of Ivy's testimony in the Deus decision would make the decisions, as written by the trial court and Court of Appeals, patently untenable under the law governing the issues. Deus, *supra*; Matsushita Electric Industrial Co. v. Zenith Radio Corporation, 475 U.S. 574, 587; 106 S.Ct. 1348, 1356, 89 L.Ed. 2d 538 (1986).

3. **Is a contract provision setting up a "due process" procedure for determining cause for termination for unsatisfactory performance invalid because the employer may otherwise terminate the employee at will?**

The court, in this case, was faced with a contract which set up duties of the employer and the employee that both were required to fulfill during the employment relationship. The contract permitted termination of the employee "at will" for any reason, without explanation by the employer. However, the contract called for the specific "due process" procedure in which an agent must be given the option to participate before the agent could be terminated with an unsatisfactory work performance designation. Moreover, there were numerous obligations and duties of Allstate required by the contract to aid an agent in fulfilling his

duties under that contract. Allstate violated the contractual obligations when it created a climate of tension and stress in the workplace, for the specific purpose of forcing the agents into another contractual arrangement. Moreover, by specifically targeting Frank Deus for termination under the "due process" procedure by manipulation of the peer group and the falsification of the standards of peer group review, it breached its contract with Frank Deus. We submit there is no jurisprudence, and none should be permitted, which invalidates such "due process" provision upon which the employees rely for fair treatment, for the sole reason that it is an at-will employment contract, for all other purposes. This was not a vague oral employment contract, but a written document with specific obligations delineating the duties and obligations of each party. A termination for unsatisfactory work product can cause substantial damage to the future of an employee, and it is totally reasonable for a company and an employee to agree that this type of termination will not be made -- with this specific designation of unsatisfactory work product -- unless he is given a full and complete chance to correct the alleged deficiency. The jurisprudence of Louisiana supports this conclusion, and is directly contrary to this decision by the Fifth Circuit Court of Appeals, which was to decide the issue under Louisiana law.

Numerous Louisiana cases hold that an employer has a right to alter, by contract, its right to terminate an otherwise at-will employee. In Brannan v. Wyeth Laboratories, 516 So.2d 157 (5th Cir. 1987), the appellate court stated as follows:

> The law on employment contracts favors the termination-at-will concept for employment without a fixed term. However, as seen by the above cases, it does not totally prohibit an employer from modifying or altering its right to

> terminate at-will employees hired for an indefinite term. In Williams [v. Delta Haven], supra, [416 So.2d 637] and Morgan v. Avondale Shipyards, 376 So.2d 516 (La. Ap. 4 Cir. 1979), the courts noted if the employer wishes to contract that the terminable-at-will employee will not be terminated except for just cause, there is no reason the courts will not enforce such an agreement. Modification of this right to fire at will, however, must be shown by a specific contract or agreement."

The Brannan v. Wyeth case, quoted above, was reviewed by the Louisiana Supreme Court at 526 So.2d 1101, and modified. (The Supreme Court found that, even if the employer had altered its right to terminate an at-will employee only for just cause, the employee was, in fact, terminated for just cause under the facts of that case.) However, the language quoted above remains good law, and was reaffirmed by the Louisiana Supreme Court in Brannan, supra.

Similarly, in Morgan v. Avondale Shipyards, supra, the court stated that:

> "the right to terminate indefinite employment at will and without notice can be altered by contract. Thus, if a contract provided that the employment was terminable without cause only upon two weeks notice, a court would presumably enforce such a provision."

Finally, in Williams v. Delta Haven, 416 So.2d 637, the court recognized that "the right to terminate indefinite employment at will can be altered by specific contract or agreement.."

It seems strange that the lower courts would treat an employment contract, and the provisions under it -- other than the termination at will provision -- any differently than any other contract which we, in America, hold sacred. Why does an employee have any less rights to enforce contract rights than any other person in America? Under the lower court's holding, the mere fact that an employment contract is terminable at will means that none of the other provisions are enforceable, including the provision requiring the company to give appropriate "hearings" to the employee if they intend to terminate for unsatisfactory performance. There is not a single case in Louisiana that suggests that all of the provisions of an at-will employment contract are invalid; on the contrary, there is a wealth of jurisprudence that is directly opposite this conclusion.

Likewise, not a single Louisiana case has held that, for a contract like Deus's to be enforceable, an employee must give "extra consideration." All of the Louisiana cases which address this subject state only that a provision whereby an employer voluntarily limits his right to terminate an at-will employee must be clearly shown by a specific agreement. The case that the court cites, i.e., Simmons v. Westinghouse Elec. Corp., 311 So.2d 28, is totally inapposite to this case, and does not hold that extra consideration must be given. Simmons is a case involving an oral agreement, not a written contract with an express agreement, as was the case here. Moreover, Deus's contract was not a contract requiring a showing of "good cause" before the employee can be terminated, but one which permitted termination at will except where the stated purpose for termination was unsatisfactory work, in which case Allstate was required to fairly evaluate him. The court should reconsider this portion of its decision as well, to bring its decision in line with Louisiana law.

CONCLUSION

It is submitted that this court should grant writs in this matter and resolve the conflict between the circuits which arises as a result of the case of Deus v. Allstate Insurance Company; and further, that the court should conclude that it is for the jury to determine whether or not the acts of an employer are extreme and outrageous in character and caused severe emotional distress and were substantially certain to cause such distress. Moreover, the court should conclude and should make it quite clear that the refusal of the trial judge and/or the judges of the Court of Appeal, to consider an eye/ear testimony of a witness cannot be rejected on the basis of credibility under a 50(a) motion; and that to do so is a denial of the constitutional right of trial by jury. This court should also give its full weight of its authority to influence not only the federal judiciary, but the state judiciary to "once and for all" to establish the equality of contractual obligation to an employee with all other business contracts.

The writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A

EXCERPTS OF THE DEPOSITION OF JAMES IVY TAKEN ON NOVEMBER 25, 1991

(Page 7 - Lines 1-12)

Q. Okay. As a manager, did you attend management meetings on different types of sales meetings?

A. Yes.

Q. Did you ever hear discussions at management meetings about targeting Frank Deus with the peer group system?

A. In the district meetings or sales manager meetings, we did hear where -- after they wanted to target a particular agent, yes, we did.

Q. Okay.

A. Talk about that.

Q. Okay. When you say target a particular agent, how was that discussed? In other words, what was the method --

A. They would put a peer group together of any particular agents. Mainly, if they wanted to target a prticular agent, they would try to get that peer group or his peers, which would he either retain agents, NOA agents, or leased office agents, and break them down and compare their production.

Q. Did you ever hear any discussions at management meetings to finagle or play with the peer group to be sure that a particular agent came out at the bottom?

A. Yes.

Q. Who would have been discussing that?

A. That would be Dave Blankenhorn, the regional vice president; Ken Artigues, the personnel manager; territory

(Page 8 - Lines 1-16)

sales manager, Dusty Rhoades; and whatever market sales manager would be over that district.

Q. Okay. Now, in 1987, do you recall any specific discussions about targeting Frank Deus with a peer group system to be sure that he came out on the bottom of the peer group?

A. Yes. The time that I heard that was when they wanted to take the Crowley agents out of the peer group so he could fall out at the bottom.

Q. In other words, take the Crowley agents out of Frank's peer group?

A. Right.

Q. To be sure that Frank fell out at the bottom?

A. Right. Narrow it down to maybe three agents in the office and they would be able to finagle the figures better.

Q. Do you know whether or not anyone instructed Raley specifically to do that with Frank's peer group?

A. Larry Rhodes.

Q. That's Dusty Larry Rhodes?

A. Right.

Q. Okay.

A. I'll stick with Dusty.

Q. Okay. Yeah. Do you know whether or not Raley did do this with Frank's peer group?

(Page 9 - Lines 1-25)

A. Yes.

Q. Was there ever any discussion in connection with taking the Crowley agents out of Frank's peer group that Frank Deus and Tom Barron were basically in about the same position production-wise or even with John Ledoux?

A. Well, these agents in the office, you know, probably either one of them could have been put on the program. You know, their production work was about the same. At

that particular time, that office was not one of the higher producing offices.

Q. Okay.

A. As far as new business. I'll say that.

Q. Not as far as renewals, but as far as new business?

A. New business, yeah.

Q. Okay. Was it a high producer -- was that particular office a high producer with regard to renewals?

A. Renewals, it had one of the largest renewable business I think in probably the territory.

Q. Okay. Now, once the peer group was, as you said, played with or finagled so that Frank fell out on the bottom, was Frank then placed on corrective review or job in jeopardy?

A. Yes. There are three steps to the corrective review: phase one, two, and three.

(Page 10 - Lines 16-25)

Q. Was Frank placed on corrective review as a result of the peer group which Raley had --

A. Yes.

Q. --had--

A. Yes. That was put together, yes.

Q. Okay. Do you recall any discussion that in doing this with the peer group for Frank that Frank was being targeted for disciplinary action?

A. Frank was a type of agent who voiced his opinion. It wasn't negative. He was just that type of person, you

(Page 11 - Lines 1-25)

know. Shouldn't anything be held against you for voicing your opinion. Possibly Dave Blankenhorn didn't like him, so they -- he was put on program.

Q. Okay.

A. For what reason it was Frank, I don't know. Like I say, anyone of these three agents could have been put on program.

Q. Now, when the peer group system was first explained to you, what were the rules and regulations? In other words, was the peer group supposed to be used on an agent if that agent was very close to his peers or was it supposed to be a large gathering?

A. No, the peer group was to you know, make you aware of where you were in regards to your peers. Supposedly, it was not to put your job in jeopardy or point you out or degrade you in any way. It was to, like I said, make you aware of where you were so you can do the things you need to do in order to get back in the pack or get back in production to w here you need to be in order to be successful.

Q. Okay. Did Rhodes, when he first introduced the peer group to you, tell you not to do a peer group analysis on an agent or put that agent on corrective review as a result of the peer group analysis unless that agent's production was way out of line with the rest of his agents?

(Page 12 - Lines 1-25)

A. That was the only way you were supposed to put an agent on a disciplinary -- take disciplinary action to one agent, is that if his production was way out of line of the other agents.

Q. In fact, did that occur with Frank, Tom, and John Ledoux?

A. Like I said, their production was so close together, either one of them could have been put on a disciplinary, you know, action.

Q. Okay. Do you recall Frank being placed on job in jeopardy?

A. That was the third phase of the program, yes. Yes, I do recall that.

Q. Did Raley tell you he was going to place Frank on job in jeopardy?

A. Yes. When it was about time for his evaluation, he told me that he felt like he would go on to the third step.

Q. Did Raley later tell you that he had put Frank on job in jeopardy?

A. After the fact, yes.

Q. Did you overhear any conversations or were you present in any conversations between Rhodes and Raley about putting Frank on job in jeopardy?

A. Other than, you know, district meetings and telephone

(Page 13, Lines 1-11)

discussions where they had, you know, discussed going to the third step.

Q. Did Raley have Rhodes' approval to put Frank on job in jeopardy?

A. He had to have regional office approval to do that.It had to come from Dave Blankenhorn, personnel management, and down the line.

Q. Was your office next to Raley's?

A. Yes.

Q. It was separated by a thin wall?

A. A wall.

(Page 14 - Lines 6-25)

Q. Okay. Did Frank appear upset?

A. Very upset.

Q. Once Frank was placed on job in jeopardy by Raley do you know whether or not he ever returned to work for Allstate?

A. Not as I recall. I think he left out of the office the same day, and at that point in time I think he just kind of gave up.

Q. Okay. When Raley placed Frank on job in jeopardy -- and I guess just to kind of give a time frame on it, in approximately 1987, approximately August of '87 -- before that time, did Frank look sickly or did he look bad?

A. You could tell that, you know, it was a lot of pressure on him; he was being stressed out. He had lost some weight, yes.

Q. Okay. Prior to being placed on job in jeopardy had Frank made any complaints about depression, ringing in his ears; that type thing?

A. No.

Q. How about did Raley eve tell you that Frank had

(Page 15 - Lines 1-20)

complained of depression, ringing in the ears; that type of thing?

A. He had said that Frank had said something about he had been to the doctor for ringing in the ears, and Frank had made a statement to me because, you know, we were talking, he said he was having problems with his ears.

Q. Okay. And what about problems with depression? Did Frank ever mention that?

A. He said he had been to the doctor for that, yes.

Q. Okay.

A. For depression.

Q. Did Raley tell you that Frank had told him that he had been to the doctor for these problems?

A. Yes.

(Page 16 - Lines 19-20)

Q. Did Raley tell you anything specific about what Frank had told him about medical problems?

(Page 17 - Lines 3-11)

A. Scott had told me about Frank having problems about ringing of the ears and being depressed.

Q. Okay. Had Frank related this to any particular problems on the job?

A. He was saying from the pressure of the job of asking him to produce more and being afraid that he might lose his job because of the program.

Q. Was any of this discussed at management meetings? In other words, Frank's medical problems?

(Page 18 - Lines 14-23)

A. Yes, it was discussed at management meetings. Scott let upper management know -- who is Dave Blankenhorn, Ken Artigues, and Dusty Rhodes -- that Frank had came to him and told him about the medical problems. And they just kind of laughed it off and said that -- they kind of laughed it off and said that it was because -- he probably was going to have a lot more ringing of the ears because of the pressure they were going to put on him.

(*Page 23 - Lines 1-6)*

That's pretty much with everything that he did. He wanted to be number one. He ruled by intimidation and managed by intimidation, I should say. And if he wanted to do something, he wanted to be number one at it. If you didn't want to, you know, jump on his wagon, then either you do it or you don't.

(Page 33 - Lines 18-25)

A. As far as pushing them to go NOA, the peer group, if you were NOA, you were in one peer group; if you wee in a leased sales office you were in another peer group. A lot of times, after you got out into the NOA program, a lot of emphasis was put on if you were going to be -- if

corrective action was going to be taken against you. A lot of times, your production was low, but nothing was ever said about taking corrective action against you because you

***(Page 34 - Lines 1-3)**

were NOA. A lot more emphasis was put on the agents on peer groups if they were in a leased sales office. They would put more pressure on those agents.

(Page 65 - Lines 1-25)

A. Well, I knew about Mr. Deus's suit --
Q. Uh-huh.
A. --before I left. I was there when he filed the suit, so --
Q. Okay. But did she go over that with you again?
A. Tell me why he was suing the company and everything?
Q. Uh-huh. She told me what was the nature of the suit, yes.
Q. Did she explain the theories of the suit as well as the basis of it?
A. The theories, explain what theories are you talking about now?
Q. The theories that he is proceeding under legally. His theories of recovery.
A. As far as he was being pressured and all that stuff?

(Page 71 - Lines 5-25)

A. Because it was new business driven --
Q. Right.
A. --they had to produce more in order to succeed.
Q. I understand that, but I mean the company's ultimate goal by doing all this was to get more production for Allstate; is that correct?
A. It was to get production up, I would say.

Q. Okay. Okay. You testified that at management meetings Frank Deus was targeted to be the bottom of his peer group?

A. Uh-huh.

Q. Did someone come out at this meeting and say: We're going to make a peer group and put Frank at the bottom?

A. At that particular time when that was stated, if I recall, that was when they took out the Crowley agents.

Q. What year was it?

A. That was in '87, early '87.

Q. Early '87?

A. Or '86. Latter part of '86, I believe, early '87, is when I think all this started.

(Page 72 - Lines 1-25)

Q. Was this part of an overall decision by Allstate to put an agent in each district on review?

A. No, they didn't want to put an agent in each district on review.

Q. They just wanted Frank?

A. When he -- when they did the evaluation with -- like I've stated before, either of those three agents could have been on the program.

Q. Okay. Let me understand something then.

A. Okay.

Q. They did a peer group analysis first?

A. They do a peer group each month.

Q. Okay.

A. Okay?

Q. So one moth in 1986 or 1987 they did a peer group analysis and then what happened at the meeting to result in Frank being targeted, as you have testified?

A. Okay. Apparently, Frank had already been targeted or it had already been discussed about Frank --

Q. Why do you say that?

A. It had already been discussed that Frank go on the program before we got to the meeting.

(Page 73 - Lines 2-25)

Q. Why do you say apparently?
A. Because the decision was almost already made when there was discussion.
Q. Explain that to me.
A. Meaning they had already discussed it previously before the meeting.
Q. Well, do you know that of your own personal knowledge?
A. Yes. They had discussed it, yes.
Q. Who told you that?
A. Because the managers -- you always discuss it in relation -- to my knowledge of dealing with territory sales managers you discuss almost on a daily basis or a weekly basis your production with your manager.
Q. But --
A. And your agents with your manager.
Q. --I understand that you would have discussed or Frank's MSM would have discussed his agents' production with upper management. Okay. I understand that.
A. Uh-huh.
Q. What makes you say specifically it had already apparently been discussed that Frank was going to be targeted?
A. Because either he had - when they did the peer group

(Page 74 - Lines 1-25)

ranking, I overhead that either of those two agents could have been put on the program, okay? They could have made a choice to take either one of those agents that -- I don't know why -- like I said, I don't know why they particularly picked Frank to go.
Q. When did you overhear this?
A. This was at a meeting.

Q. You overheard the discussion that took place prior to the meeting or this was --

A. No, you asked me at a sales meeting.

Q. Yeah.

A. You know.

Q. You said apparently Frank had already been targeted before the sales meeting?

A. Because the peer group had already been put together.

Q. Okay. But that issue --

A. Before a decision is made, you go to the manager and discuss, you know, which agent you want to put on and then you might go back and redo the peer group to make it fall that way.

Q. Is the peer group never just done and you see who's at the bottom?

A. You do it each month, okay?

Q. Uh-huh.

A. Yes, it falls out. Now, before you put an agent on

(Page 75 - Lines 1-25)

program --

Q. Uh-huh.

A. --his production supposedly, you know, supposed to be way below the rest of the agents.

Q. Uh-huh.

A. Okay?

Q. Uh-huh.

A. Now, at one point in time, you know, if you wanted to take action where you want to put somebody on the program in order to either make an example or, say, put fear in the other agents' hearts --

Q. Uh-huh.

A. --you would take one of those agents and put them on the program.

Q. Okay. But now my question is, you've testified that Frank Deus was targeted. You've also testified that apparently

the decision had been made when they came into this meeting. Were you --

A. I said apparently that it had been discussed before they got to the meeting.

Q. All right.

A. Not the decision was made. He had to go and talk with him at that point in time to make a decision.

Q. Were you present when there was manipulation of a peer group to put Frank at the bottom?

(Page 76 - Lines 1-15)

A. Was I present?

Q. Or was that peer group already formed when you heard about it? Do you have any personal knowledge that, in fact, the peer group was manipulated?

A. At the point in time if you have three agents to fall out at the bottom --

Q. Uh-huh.

A. Okay. -- You discuss it with your manager and decide then which agents you want to put on program, then you go back and redo the figures or you might take a smaller group of agents and put that agent on the bottom.

Q. If, in fact -- as I understand it by that point in time Mr. Deus's peer group had already been narrowed to the three people in the company leased office at Felicie Street; is that correct?

(Page 77 - Lines 8-25)

Q. In 1987, at the time you're saying that this sales meeting took place where it was your understanding that Frank had been targeted, is that correct dates?

A. At first, if I'm not mistaken, when he was put on the program, all of the agents were in there together.

Q. All right. I need more specifics from you.

A. The retain agents -- I mean not the retain agents, but the Crowley agents and the leased-sales office agents in Lafayette.

Q. What year were the Crowley agents removed?

A. It was all done in '87.

Q. You're sure?

A. Sure.

Q. You're sure sure that in '87 the Crowley agents were

(Page 78 - Lines 1-23)

removed?

A. If I'm not mistaken.

Q. Okay. If you're not mistaken. But I mean is there a chance in your mind that you're mistaken?

A. In 1987.

Q. Okay. So the Crowley agents were removed in 1987, and then there was a peer group of three?

A. Uh-huh.

Q. Do you have any personal knowledge that anything was done to the peer group ranking other than comparing the figures as they came out of the base statistics, that that peer group was manipulated such as to put Frank at the bottom?

(Page 79 - Lines 4-23)

A. Of those three?

Q. Yeah. Of those three -- All right. After the Crowley agents were out, we've got a peer group of Frank, Barron, and Ledoux.

A. Uh-huh.

Q. Do you have any personal knowledge that anything was done to manipulate the figures that those three gentlemen produced such as to put Frank at the bottom?

A. They didn't finagle the figures, they finagled the agents in different peer groups. That's what they -- not the figures, per se.

Q. All right. You've testified also -- so you're saying taking the Crowley agents out was the finagling?

A. Yes.

Q. The Crowley agents in the same kind of market as the Lafayette agents? Are the rates the same in Crowley as they are in Lafayette?

A. No, the rates are not the same. Each market -- or not market -- each rated territory has different ratings, okay?

(Page 90 - Lines 13-25)

Q I'm understanding you to say that this split was made, the result of this split was that there was a smaller peer group that Frank was at the bottom of, but you don't know just exactly why the split was made.

A. Even after they made that split, it still -- those three agents, either one of them could have been put on the program.

Q. But is it your testimony that the split was made for the pure and sole purpose of targeting Frank Deus?

A. I can say this: He was already -- had already started the disciplinary program on him. When they split it, then it was to probably make him fall out at the

(Page 91 - Lines 1-12)

bottom.

Q. Probably?

A. Yes, because those other two agents were lower than him.

Q. Probably was or you have specific knowledge that that was the purpose of the split?

A. You need to go get the peer group ranking and put it on video. That would show you where he fell out after the fact.

Q. No, that's --

A. After the fact --

Q. --After the fact--

A. --before they had all five agents in the peer group --

Q. Uh-huh.
A. --he was not on the bottom, okay?
Q. Uh-huh.
A. When they did that, then he fell out on bottom. They had already started disciplinary program on him prior to that.

(Page 92 - Lines 6-25)

Q. What personal knowledge do you have of when they specifically started a disciplinary program on Frank?
A. If I recall, it was the latter part of '86 is when they started.
Q. All right. Who started? What specifically was done that started this process?
A. They started peer group rankings.
Q. Allstate started peer group rankings?
A. Well, that's -- when you put a person on program, you go through peer group rankings for a number of --
Q. You said a peer group ranking was done every month, right.
A. Yes.
Q. Okay. What different happened sometime late in 1986 that started the disciplinary process on Frank, as you have described that?
A. Like I said, I don't know for sure why they pinpointed Frank or -- they could have went into the officeand pinpointed either of the other three agents.
Q. All right. And it's your testimony that Frank told

(Page 95 - Lines 3-25)

Q. Okay. You're sure it was a job in jeopardy and not some other phase?
A. It was a job in jeopardy.
Q. Okay.
A. Because I was told by Scott that he was put on job in jeopardy.

Q. No, I'm not asking what you were told; I'm asking what you saw.

A. I saw it and I was also told by Scott Raley that he was put on job in jeopardy.

Q. Okay. I have a little other point here where I need to clear up something. You testified at one point that that you had not heard anyone talk about Frank complaining about depression or ringing in the ears and then shortly after that, you testified after a couple of questions from Ms. Leonard that, in fact, Scott told you that Frank had complained to him about being depressed and about having ringing in the ears. Which is your testimony tonight?

A. Scott had told me about that.

Q. Okay. Why did you testify initially that you had never heard anybody talk about Frank complaining about?

A. I didn't hear anybody else. I might have misunderstood the question.

(Page 96 - Lines 1-25)

Q. Okay.

A. But if it was specifically -- you know, if -- there was discussion between Scott and I. He had came to Scott and told him about it.

Q. So your testimony tonight is that Scott came to you and told you that Frank had complained to him specifically about seeing a doctor --

A. Right, said that --

Q. --for depression?

A. --he had been to a doctor for depression and ringing of the ears.

(Page 97 - Lines 18-25)

Q. Okay. Tell me specifically what meeting was it that Scott told upper management that Frank had come to him and they laughed it off.

A. Are you looking for dates and time?

Q. Uh-huh. As close as you can remember.

A. I don't recall. I would say it was probably in late summer of '87. Mid to late summer of '87.

Q. All right. And it's your testimony that Frank told

(Page 98 - Lines 1-25)

Scott about the doctor and ringing in the ears or doctor and depression or both?

A. Both of them, I recall.

Q. Okay.

A. Because he had to fill out the time cards when he was ill.

Q. When he was ill?

A. Yes, when he was ill.

Q. Okay. Did Frank miss a lot of work in there?

A. Well, he wasn't missing a lot of work. I think time off he was missing for going to the doctor. He did tell Scott if he was going to the doctor or whatever.

Q. Okay. And you have also testified that you were asked to manipulate your peer group so that somebody named Cam would go on to --

A. Cammusso. The statement was made: Do whatever it takes, you know, to --

Q. And --

A. If he fall out on bottom, then do whatever it takes to --

Q. Make him on the bottom?

A. Yes.

Q. Okay. Then you testified that after a while, people just forgot about Cam and didn't worry bother about him?

A. Well, after --

(Page 130 - Lines 2-25)

Q. In general, do you have any recollection as to where Frank fell in these monthly peer group averages, which I think --

A. In the monthly peer group averages, the way we did those were, we didn't break them down as far as to NOA agents; we just did the monthly peer group as a whole. And to my knowledge, he would fall out middle of the pack. He wouldn't be at the bottom.

Q. Now, while Frank was an agent there from let's say about 1985 to 1987, what was the rating system like for Allstate? In other words, was Allstate competitive with other markets for selling insurance in that Lafayette area?

A. In '82? What year?

Q. Actually, I was just looking at '85 to '87,but just generally around that time period. You can even go back to '84 or '83, whatever. I'm just trying to find out what the rating system was and if Allstate was competitive at that time period with other insurance companies.

A. They were in '85 -- '85/'86 is when we came and had a good competitive year. We took some rate decreases and a lot of companies took rate increases so we were pretty competitive. In '85, when we first went into management, it was pretty tough then. We were kind of the underdog

(Page 131 - Line 1)

then. It was an up and down situation.

(Page 137 - Lines 2-15)

Q. In 1987, by 1987, were the NOA agents not in a peer group by themselves?

A. The question was asked on a monthly basis.

Q. All right. But there's a difference --

A. The question was asked on a monthly basis that I answered to. On a monthly basis there is a peer group done with everybody in it.
Q. Okay.
A. She asked me, you know, where he ranked in that peer group. I told her at the middle of the pack.
Q. All right. Let's --
A. That's what was asked.
Q. Let's clarify something, then.
A. Okay.
Q. Because peer group is a term of art which has been used extensively in these depositions referring to a small group of people who are compared against each other for evaluation purposes. Are you referring to simply a monthly listing of all agents in a district --
A. A monthly ranking of all agents.
Q. Agents --
A. The same as a peer group.
Q. All right. But it's not the same as a peer group. You're referring to --

(Page 146 - Lines 1-7)
Q. Let's take '86.
A. In '86, I would say he would probably be middle of the pack. He wouldn't be at the bottom, I wouldn't think.
Q. How about '87 in the entire district?
A. In '87, about the same.
Q. Okay. And '85?
A. In '85? Middle of the pack.

No.

IN THE
SUPREME COURT OF THE UNITED STATES

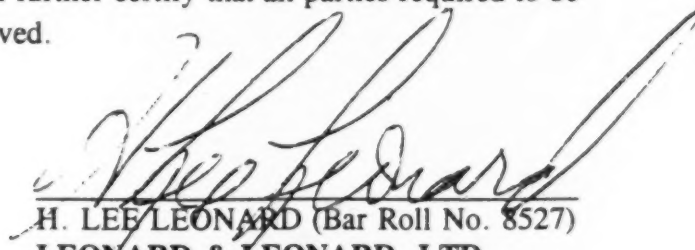
FALL TERM, 1994

FRANK S. DEUS, Petitioner,
v.
ALLSTATE INSURANCE CO., Respondent,
VOORHIES & LABBÉ, Intervenor.
FRANK S. DEUS, Petitioner,
v.
ALLSTATE INSURANCE COMPANY, Respondent,
v.
NATIONAL NEIGHBORHOOD OFFICE AGENTS' CLUB, INC. and RANDY J. LANE.
FRANK S. DEUS, Petitioner,
v.
ALLSTATE INSURANCE CO., Respondent.
FRANK S. DEUS, Petitioner,
v.
ALLSTATE INSURANCE CO., Respondent,
v.
VOORHIES & LABBÉ, Intervenor.
FRANK S. DEUS, Petitioner,
v.
ALLSTATE INSURANCE CO., Respondent.

CERTIFICATE OF SERVICE

I, H. LEE LEONARD, a member of the Bar of this Court (membership applied for), hereby certify that on this 1st day of July, 1994, three copies of the Petition for Writ of Certiorari in the above entitled case were mailed, first class postage prepaid, to Dona J. Dew and Skye C. Henry, Chaffe, McCall, Phillips, Toler & Sarpy, 1100 Poydras Street, Suite 2300, New Orleans, LA

70163-2300, counsel for Allstate Insurance Company; three copies to Tom W. Thornhill, Thornhill & Associates, 1308 Ninth Street, Slidell, LA 70458, counsel for National Neighborhood Office Agents Club, Inc.; three copies to Jack E. Kennedy, 425 W. Plumb Lane, Reno, Nevada 89509, counsel for Randy J. Lane; and three copies to John Craig Jones, Voorhies & Labbe, Post Office Box 3527, Lafayette, LA 70502-3527, counsel for Voorhies & Labbe. I further certify that all parties required to be served have been served.



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